

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2338 CUTTACK, THURSDAY, DECEMBER 5, 2024/MARGASIRA 14, 1946

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th November 2024

S.R.O. No. 642/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 23rd October 2024 passed in the I.D. Case No. 36 of 2022 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Hi-Tech Medical College & Hospital (under Vigyan Bharati Charitable Trust), At Health Park, Pandra, Bhubaneswar, PIN-751025, Dist. Khurda and Shri Pratap Kumar Dalai, S/o Jayakrushna Dalai, At Malatipatpur, Senapatia, P.O./P.S. Chandanpur, Dist. Puri was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 36 of 2022

Dated the 23rd October 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of .. First Party
M/s Hi-Tech Medical College & Hospital
(under Vigyan Bharati Charitable Trust),
At Health Park, Pandra, Bhubaneswar,
PIN- 751025, Dist. Khurda.

And

Shri Pratap Kumar Dalai, .. Second Party
S/o Jayakrushna Dalai,
At Malatipatpur, Senapatia,
P.O./P.S. Chandanpur, Dist. Puri.

Appearances:

Shri D.C. Mohanty, Advocate	.. For the First Party
Shri Sushanta Dash, Advocate	.. For the Second Party

AWARD

The Labour & E.S.I. Department of Government of Odisha, having satisfied that there exists an industrial dispute between the above named parties, have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. 4276—LESI-IR-ID-0086/2022-LESI, dated the 3rd June 2022 :-

SCHEDULE

“Whether the action of the management of M/s Hi-Tech Medical College & Hospital (Under Vigyan Bharati Charitable Trust), Bhubaneswar in terminating the service of Shri Pratap Kumar Dalai in guise of long leave with effect from the 28th September 2020 is legal and/or justified ? If not, what relief Shri Dalai is entitled to ?”

2. Pursuant to the above schedule, the second party filed his claim statement stating, *inter alia*, that the first party involved herein is a multidisciplinary institute offering various services for patient diagnosis and patient care having high standard clinical care and is a private Medical College associated with Teaching Hospital. The second party had got an opportunity to work under the first party with effect from the 6th February 2001 where he discharged his duties to the best of his ability under the direct control and supervision of the managing authorities continuously till the 28th September 2020. Elaborating his stand on the score, it is stated in the claim statement that his dominant nature of duties was not at all supervisory in nature and all along he used to discharge duties as per the instructions of the superior authorities of the management. The second party alleges that while working as such, all of a sudden on the 28th September 2020 the Head-Accounts and Finance issued a letter asking him to go on long leave with effect from the 1st October 2020 on purported ground of COVID-19 situation and was asked to settle his dues in the Accounts and Finance Section at Bhubaneswar. According to the second party, such action of the first party amounts to termination of his service as there is no specific period for which he was asked to go on leave, besides it also amounts to unfair labour practice being in contravention of the provisions of the Industrial Disputes Act, 1947 (for short ‘the Act’). Specifically it has been averred in the claim statement that as the second party had rendered continuous and uninterrupted service for more than 19 years under the first party and in the process he had completed more than 240 days of continuous service preceding the date of his illegal termination of service, the action of the first party in terminating his service with effect from the 1st October 2020 is unsustainable in the eye of law and owing to his not gainfully employed elsewhere after the illegal termination, he is entitled to the relief of reinstatement and full back wages with all consequential service benefits.

3. The first party entered appearance in the dispute and filed its written statement. Challenging the status of the second party, it is stated in the written statement that the second party was employed in supervisory capacity and therefore, he cannot be held to be a ‘workman’ within the meaning of Section 2(s) of the Act. Disputing the averment of the second party that he was appointed on the 6th February 2001, the first party has taken the plea that during continuance of the second party under it at Puri Branch it came to the notice of the first party that the second party was involved in multiple criminal activities, inasmuch as, one Mahendra Kumar Senapati lodged an FIR against the second party at Baselsahi Police Station for offences punishable under different sections of IPC and consequently due to frequent visit of Police, the management was in

an embarrassing situation and with a view to avoid such activities the second party was advised to join at Bhubaneswar. But, as the second party did not agree he was directed to go on long leave vide letter dated the 28th September 2020 and at present he is facing trial in GR Case No. 2100 of 2020 in the Court of S.D.J.M., Puri. It has specifically been pleaded that the second party was never terminated from service, rather when he was advised to join at Bhubaneswar he did not carry out the orders and remain silent. It is stated that the second party being an educated person is employed somewhere and is earning his livelihood. With the aforesaid assertion, the first party claims rejection of the prayer of the second party in the present proceeding.

4. A rejoinder to the written statement has been filed by the second party mostly reiterating his stand taken in the claim statement and further stating that as a Peon his nature of duties being purely manual, clerical and operational and to carry out the orders of his superiors, it is wrong to assume that he was discharging supervisory nature of duties. Disputing the averments of the first party that the second party was involved in multiple criminal activities, it is explained that he has been falsely implicated in the criminal case arising out a civil dispute of the company with a private person, namely Mahendra Senapati at Old Jail Road near Kumbharpada Police Station, but later on he was not named in the charge sheet. The plea that the second party was advised by the first party to join at Bhubaneswar has also been denied to be false, concocted and afterthought. Rather, it is averred in the rejoinder that the second party was asked to settle his dues in the Accounts and Finance Section at Bhubaneswar for being terminated.

5. Basing on the pleadings of the parties, the following issues have been settled for determination :—

ISSUES

- (i) Is the reference maintainable ?
- (ii) Is Shri Pratap Kumar Dalai a ‘workman’ as defined under Section 2(s) of the I.D. Act, 1947 ?
- (iii) Is the action of the management of M/s Hi-Tech Medical College & Hospital, (Under Vigyan Bharati Charitable Trust), Bhubaneswar in terminating the service of Shri Pratap Kumar Dalai in guise of long leave with effect from the 28th September 2020 is legal and/or justified ?
- (iv) If not, what relief the workman Shri Dalai is entitled to ?

6. In order to substantiate their respective stand, both parties have adduced oral as well as documentary evidence. While the second party examined himself as WW1 and placed reliance on documents marked Exts.1 to Ext.4, the first party examined its HR Head as MW 1 and placed on Ext. A.

FINDINGS

7. *Issue Nos. (i) and (ii)*—These two issues are taken-up simultaneously for consideration for the sake of convenience, as the first party has challenged the maintainability of the reference on the sole ground that the second party is not a ‘workman’ within the meaning of Section 2(s) of the Act.

Learned Advocate representing the first party argued with vehemence that in view of the specific stand of the first party that the second party was discharging supervisory nature of duties the reference of the dispute is not maintainable; the reason being second party is not a ‘workman’ covered under the definition of Section 2(s) of the Act. Assailing the submission, it is contended by the learned counsel representing the second party that being a Peon the second party was carrying out the instructions of the superior authorities of the management and therefore he is well covered under the definition of ‘workman’ as defined under Section 2(s) of the Act. Besides, the management having failed to substantiate its plea that the second party was discharging supervisory nature of duties while being posted at its Puri Branch, the reference of the dispute is very much maintainable in this forum.

8. The rival contentions of the parties on the issues lead this Tribunal to examine first the Statutory meaning of ‘workman’ as described under Section 2(s) of the Act and so also the dictums of the Hon ‘ble Courts on the point. Section 2(s) which defines ‘workman’ reads as under :—

Section 2(s) : “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person, –

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

9. In the case in hand, the second party seems to have taken a consistent plea not only in his complaint before the labour authority but also in his rejoinder as well as in evidence that he was working as a Peon under the management and was discharging duties as per the instructions of the superior authorities of the management. In course of hearing no evidence is placed on behalf of the management showing the supervisory nature of duties assigned to the second party, rather it is found admitted by MW 1 in his cross-examination at Para.15 that the second party was working as a Peon under the first party. In absence of documents to the effect that the second party was discharging supervisory nature of duties despite being posted as a Peon under it, the averment made in the context in the written statement is of no help to the first party. It is the management who should have produced convincing evidence to the satisfaction of the Tribunal that the second party despite being posted as a Peon under it was entrusted with supervisory nature of duties. Even the first party has failed to place on record the letter of appointment of the second party

which could have thrown light on the terms and conditions of appointment of the second party. It being the settled position of law that the nature of duties of a person is the paramount consideration to arrive at a conclusion on the point, the management ought to have placed sufficient evidence on record to establish the supervisory functions of the second party and absence of such materials on record constrains this Tribunal to hold that the management has miserably failed to establish its stand that the second party is not a 'workman' coming within the purview of Section 2(s) of the Act and therefore, the reference of the dispute is not maintainable before this Forum.

In the result, Issue Nos. (i) and (ii) are answered in favour of the second party.

10. *Issue No. (iii)*—This issue pertains to the legality and justifiability of the action of the first party in terminating the services of the second party with effect from the 1st October 2020. In the context, the learned counsel for the second party places reliance on Ext. 2, dated the 28th September 2020 and contends that in the letter under reference though the first party instructed the second party to go on long leave with effect from the 1st October 2020 in the wake of COVID-19 with a further advice to settle his dues, the same amounts to termination of his service, as because the management without taking into consideration his long rendition of service under it straight away took such an action in gross violation of the provisions of the Act. The learned Advocate for the management, on the other hand, contended that during continuance of the second party at Puri Branch as it came to the notice of the management that the second party was involved in multiple criminal activities, inasmuch as, one Mahendra Kumar Senapati lodged an FIR against the second party at Baselsahi Police Station for offences punishable under different sections of IPC and consequently the management was in an embarrassing situation due to frequent visit of Police, the second party was advised to join at Bhubaneswar. But, as the second party did not agree he was directed to go on long leave vide letter dated the 28th September 2020. He further contended that at present the second party is facing trial in GR Case No. 2100 of 2020 in the Court of S.D.J.M., Puri. In such scenario, it is argued, the action of the first party cannot be construed as termination of service of the second party and consequently he is not entitled to the relief (s) claimed.

11. At the outset, it is worthwhile to mention here that while the management has consistently taken a stand that the second party was involved in multiple criminal activities and presently he is involved in G.R.Case No. 2100 of 2020, pending trial before the learned S.D.J.M., Puri, yet no documentary evidence is placed on record as to if the management knowing such criminal activities of the second party had asked him any explanation/show cause and initiated a departmental proceeding against him prior to issuance of Ext. 2. Rather, it discloses from Ext. 2 that due to the impact of COVID-19 the second party was advised to go on long leave. It is also in the evidence of MW 1 in Para.14 of his cross-examination that no show cause was issued to the second party for his unauthorised absence from duty and no enquiry was conducted for such unauthorised absence before presuming the act of the second party as abandonment of employment. In the above background, the removal of the second party from employment, in my view has no nexus at all with his involvement in the alleged criminal activities; the reason being that no departmental action was taken against the second party pursuant to such a stand.

The second party in his pleadings as well as evidence has categorically stated that he was

under the employment of the first party organisation since the 6th February 2001 and continued to work till the 30th September 2020, but the first party in violation of the provisions of the Act has terminated his service with effect from the 1st October 2020. In order to prove his continuous service, the second party had moved a petition on the 29th April 2024 seeking production of records relating to payment of salary/wages/acquittance from the possession of Hi-Tech Estates & Promoters Pvt. Ltd. from February 2001 till March 2015 and of the present management for the period from April 2015 to the 28th September 2020 and upon hearing the parties the Tribunal did not incline to pass any order directing the first party to cause production of the documents of M/s Hi-Tech Estate & Promoters Pvt. Ltd. for the period from February 2001 to March 2015; the reason being that M/s Hi-Tech Estate & Promoters Pvt. Ltd. is not a party to the reference and accordingly passed orders to cause production of the documents for the period the second party claims to have worked under the first party till termination of his service i.e. the 1st October 2020. As it reveals from record, the first party filed only the salary sheet of the second party for the period from January 2018 to September 2020 and got the same proved through MW 1, which has been marked as Ext. A. The continuous employment of the second party under the first party from the 1st January 2018 to the 1st October 2020 is also found to have been admitted by MW 1 in his cross-examination at Para.13. It is also in his cross-examination that nothing mentioned regarding the period of leave in Ext. 3, nor any written intimation was given to the second party to resume duty after issuance of Ext. 2.

12. On an analysis of the evidence, both oral as well as documentary, as discussed above, the Tribunal is of the view that the second party though not able to establish his engagement under the first party from the 6th February 2001, yet he has substantiated his continuous employment under the first party for the period from the 1st January 2018 to the 1st October 2020 and thus was entitled to the protection of Section 25-F of the Act. There being admitted non-compliance of the provisions of Section 25-F of the Act by the first party at the time of issuance of Ext. 2, which in my view, is nothing but termination of his employment, the action of the first party cannot be said to be either legal or justified.

Accordingly, Issue No. (iii) is answered in favour of the second party.

13. *Issue No. (iv)*— Now it is to be determined as to what relief the second party is entitled to. As has been held under Issue No. (iii), the second party has rendered continuous service under the first party for a period nearing three years and was ousted from employment during a crucial period i.e. COVID-19 and that too without there being sufficient cause and in gross violation of the provisions of the Act. As it reveals from the cross-examination of the second party, in connection with a police case he was arrested and sent to jail custody prior to the 1st October 2020. It further reveals from his cross-examination that he is interested and willing to join the first party if an offer is made to that effect by the management. But, looking to the background of facts and to maintain discipline in the organisation of the first party, some monetary compensation in lieu of reinstatement and back wages, in my view, is found to be an appropriate relief to compensate the second party

for the illegal and unjustified action of the first party. Accordingly, the first party is directed to pay a lump sum compensation of Rs.1,00,000 (Rupees one lakh) only to the second party in lieu of his reinstatement and back wages within a period of two months of the date of publication of the Award in the Officials Gazette, or else the amount of compensation would carry a simple interest of 6% per annum till its realisation from the first party.

Issue No. (iv) is answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA

23-10-2024

Presiding Officer

Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA

23-10-2024

Presiding Officer

Industrial Tribunal, Bhubaneswar

[No. 10197—LESI-IR-ID-0086/2022-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government